

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON D. BOLLING,

Defendant.

Case No. 10-cr-40038-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Brandon D. Bolling's motion for an order (Doc. 48) in which he questions the Court's jurisdiction to impose his criminal sentence. The Court does not have jurisdiction to grant this motion because Bolling's case is on direct appeal at this time. "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

The Court further believes that, although he did not cite it in his motion, Bolling intends to invoke 28 U.S.C. § 2255 because the relief he appears to seek – vacating his sentence – is only available through such a motion. A § 2255 petition should be filed as a separate proceeding, not as a motion in his criminal case. Furthermore, filing a § 2255 motion is a serious matter, for filing such a motion will subject subsequent § 2255 motions to the law's "second or successive" motion restrictions. *See Castro v. United States*, 540 U.S. 375, 377 (2003). Thus, the Court will not construe Bolling's current, rather ambiguous, filing as a § 2255 motion. Instead it **DENIES** Bolling's motion (Doc. 48) **without prejudice** and **DIRECTS** the Clerk of Court to send Bolling instructions and a form for filing a § 2255 motion along with a copy of this order at:

Brandon D. Bolling
Reg. # 08702-025
Yazoo City FCI-Medium
P.O. Box 5888
Yazoo City, MS 39194

IT IS SO ORDERED.
DATED: July 15, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE